Supreme Court, U.S.
FILED
FEB 1 - 2011
OFFICE OF THE CLERK

No. 10-642

In The
Supreme Court of the United States

PHANENDHARNADH L. N. KONE,

Petitioner pro se,

v.

VIRGINIA DEPARTMENT OF STATE POLICE,

Respondent.

On Writ of Certiorari to the
Supreme Court of Virginia

PETITION FOR REHEARING

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PETITION FOR REHEARING

To the Honorable Judges of the Supreme Court of United States of America:

Pursuant to Rule 44.1 of the Rules of the Supreme Court of United States of America, petitioner pro se, Phanendharnadh L. N. Kone ("Kone") respectfully requests a rehearing from the decision of this Court rendered on January 10, 2011.

ARGUMENT

I. INFORMATION ABOUT PETITIONER PRO SE AND FACTS ABOUT THIS CASE

Petitioner pro se, Kone, was enrolled with MIT Professional Institute in 2008. Kone was enrolled in PhD in Information Technology with specialization in Information Security with the School of Business and Technology, Capella University. Kone holds a Master of Technology degree in Computer Science and Data Processing from Indian Institute of Technology, Kharagpur, West Bengal, India and a Bachelor of Technology degree in Electronics and Instrumentation Engineering from Kakatiya University, Warangal, Andhra Pradesh, India. Kone holds certificates from Community College Workforce Alliance (CCWA), CPI The Openfox Company, Ascend Communications, IBM, Checkpoint Software Technologies Ltd., Learning Management System (Virginia State Police) etc.

During Kone's employment with Department of State Police ("DSP") respondents produced wrong reports, wrong notices, falsified documents and forged documents.

Kone filed Grievance Form A (Rev. 8/14/2002) of Department of Employment Dispute Resolution ("EDR") on September 15, 2008 and advanced his grievance from first resolution step, second resolution step, third resolution step to qualification for hearing. EDR assigned an EDR Case number to Kone's grievance and the EDR case number is 8985. On December 16, 2008 at 7700 Midlothian Turnpike, Richmond, Virginia the EDR case number 8985 was heard by hearing officer. During the hearing respondents needed more time to think about the exhibits and their implementation. At the hearing on December 16, 2008 respondents evidence contained forged documents and falsified documents. Respondents failed to substantiate their thoughts with source code or process control objectives or logical reasoning. The transcript of hearing on December 16, 2008 reveals that respondents are not aware of technical standards and process flow. The transcript of hearing on December 16, 2008 is present in two audio tapes.

Hearing officer issued his decision on December 23, 2008. Kone requested hearing officer to reconsider his decision and Kone's request for reconsideration was received by EDR

on January 5, 2009. Hearing officer issued his response to reconsideration on January 8, 2009. On January 14, 2009 EDR Director received a letter from Kone requesting administrative review of the hearing decision in EDR Case Number 8985. On February 6, 2009 EDR Director issued a memorandum which is EDR Ruling No. 2009-2214.

On February 4, 2009 Kone filed Grievance Form A – Expedited Process with BASS of the Superintendent's office of the DSP. DSP forwarded Kone's Grievance Form A – Expedited Process to the EDR. On February 24, 2009 EDR Director issued a memorandum which is EDR Ruling No. 2009-2229.

On February 25, 2009 Clerk of the Circuit Court of Chesterfield County issued a Notice of Filing of Appeal with Case No. CL09-498.

When Kone informed the Circuit Court of Chesterfield County about the forged documents and falsified documents submitted by respondents, respondents failed to reply or rebut Kone's allegations about the forged documents and falsified documents.

II. DECISION OF HEARING OFFICER IS CONTRADICTORY TO LAW

During Kone's employment at DSP, Kone worked on network layers and application layers. Kone configured and administered systems and software. Kone wrote programs and the programs

written by Kone generated correct reports.

On the day of hearing i.e. December 16, 2008 all witnesses from DSP failed to substantiate their allegations with source code and best practices in information technology. All allegations from DSP are vague. On the day of hearing, all witnesses from DSP were silent or ignorant about the best practices or standards in information technology. Hearing officer failed to test and verify the credentials of witnesses submitted by DSP. Witnesses submitted by DSP were not qualified and competent to assess the performance of Kone.

During Kone's employment at DSP, DSP produced falsified documents and forged documents. Hearing officer relied on the falsified documents and forged documents. Obviously hearing officer's decision is wrong and the decision of hearing officer should be reversed.

If Kone's petition is not granted than there is no assurance that DSP will not repeat the practice of forging documents or falsifying documents against Kone.

III. THE COURT OF APPEALS ERRED IN IT'S MEMORANDUM OPINION PER CURIAM

The Court of Appeals erred in it's memorandum opinion per curiam on November 24, 2009, when it stated that:

> In addition, the issues appellant raised on appeal to the trial court involved evidentiary materials, witness competency and credibility matters, and the hearing officer's findings of fact, all of which were beyond the scope of review of the trial court pursuant to Code § 2.2-3006(B).

Virginia Code Ann. § 2.2-3006(B) does not restrict or limit Courts to obtain opinions from experts. Under Virginia Code Ann. § 2.2-3006(B) the Court can obtain opinions from experts or reverse the decision of hearing officer.

In page numbers 51-a2 to 53-a2 of the supplemental appendix under Complete transcript of the Testimony and other incidents, when heard before the Honorable Michael C. Allen, beginning at 9:00 a.m., Court said:

> I understand you object to this, you believe this court should have reviewed the evidentiary findings ---- of the hearing officer. And you have made that point and that is reflected in the record. Well, you have -- perhaps I should rephrase it. You have the hearing officer's recording so that that record that you challenge is before the Court of Appeals already. It's in the file, the recordings of the hearing officer's proceedings.

In page numbers 53-a2 to 55-a2 of the supplemental appendix under Complete transcript of the Testimony and other incidents, when heard before the Honorable Michael C. Allen, beginning at 9:00 a.m., Court said:

> So to the extent that you're asking the hearing officer to overturn this court's decision and you want to be able to refer – excuse me, you're asking the appellate court to overturn this Court's decision and you're going to ask the appellate court to review those findings and allow you to comment on them, you already have a record that enables you to do that because you have the recordings of the hearing officer. And you have this Court's order granting the motion to dismiss that was filed by the State Police, the Department of State Police. So you have the record from the hearing officer's proceedings and you have a record showing that this court, in error, you think, refused to review those findings. So you have an adequate record to enable the appellate court to decide your appeal.

In page number 56-a2 of the supplemental appendix under Complete transcript of the Testimony and other incidents, when heard before the Honorable Michael C. Allen, beginning at 9:00

a.m.. Court said:

> that issue is doubly preserved in the record, and you have, I think, a sufficient basis to argue to the appellate court that my decision to sustain the Department's motion to dismiss your appeal was erroneous.

The hearing officer in his decision wrote that his decision can be appealed. The Honorable Judge from the circuit court of Chesterfield county said that his decision to sustain DSP's motion to dismiss Kone's appeal is an error. So how can the Court of Appeals of Virginia or the Supreme Court of Virginia issue their opinions without hearing Kone?

The Court of Appeals of Virginia or the Supreme Court of Virginia never heard Kone and gave their opinions with errors. The opinions given by the Court of Appeals of Virginia or the Supreme Court of Virginia can cause irreparable damage to Kone.

IV. KONE WAS DEPRIVED OF ALL RESEARCH AND PRACTICAL USE OF SYSTEMS AND SOFTWARE IN PUBLIC SAFETY, PRECISE WEATHER MONITORING, HEALTH CARE ETC.

Kone produced substantial evidence of the unreasonableness of the respondents. Kone was deprived of all research and practical use of

systems and software in public safety, precise weather monitoring, health care etc., and has been discriminated against. Without further detailing the evidence it is clear that Kone has produced substantial evidence of the unreasonableness of the respondents, hearing officer and EDR Director. DSP produced no evidence of the reasonableness of its action. In fact the only evidence that respondents introduced were the falsified documents and forged documents.

CONCLUSION

Kone requests the Court to grant this petition to rehear and enter final judgment in favour of Kone.

Under Virginia Code Ann. § 2.2-3006(B) the Court can reverse the decision of hearing officer. Kone requests the Court to reverse the decision of hearing officer.

Kone requests that the final order of the Circuit Court of Chesterfield County be reversed and the case remanded with instructions for entry of decree to provide respondents to withdraw their decisions against Kone and award costs to Kone under the present Virginia Code Ann. § 2.2-3006(E).

Respectfully submitted,

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Date: February 1, 2011

CERTIFICATE OF PETITIONER PRO SE

Pursuant to Rule 44.2 of the Rules of the Supreme Court of United States of America I believe that this petition for rehearing is meritorious and I hereby certify that this petition is presented in good faith and not for purposes of delay.

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